

STATE OF ILLINOIS



ILLINOIS COMMERCE COMMISSION

Office of General Counsel

August 25, 2004

Mr. Ross E. Kimbarovsky
Ms. Kathleen Holper Champagne
Attys. for the Trustee for Resource Technology Corporation
Ungaretti & Harris
3500 Three First National Plaza
Chicago, IL 60602

Re: Docket No. 02-0461, Illinois Commerce Commission On Its Own Motion -vs-
RTC Pontiac, Citation to show cause for continued QSWEF Certification.

Mr. Kimbarovsky and Ms. Champagne:

This letter is in response to Ms. Champagne's letter of August 19, 2004. I want to clarify Staff's position with respect to providing certain documents to RTC. While there is no basis under the Commission's Rules of Practice to allow parties to Commission proceedings to conduct discovery of non-testifying Staff members, without waiving that objection, RTC has been provided documents in the possession of Mr. Harold Stoller, a non-testifying Staff member, in which a testifying Staff member was the author of the correspondence and that correspondence was not protected by attorney/client privilege and the correspondence was relevant to the issues in this proceeding. Staff will not provide to RTC correspondence in which the author is a non-testifying Staff member.

In Ms. Champagne's letter of August 19, 2004 an inquiry was also made regarding the privilege log. I will further explain Staff's position with respect to why a privilege log is not necessary for documents that have been segregated but not provided to RTC because the documents are either correspondence from a non-testifying Staff witness, protected by the attorney client privilege and/or not relevant to the issues in this proceeding. The grounds for Staff's objections to providing the documents are known. If RTC wishes to make legal arguments seeking those documents in response to Staff's objections the absence of a privilege log does not prevent RTC from doing so. If any documents are ultimately directed to be provided to RTC, the existence of a log is not necessary to determine the documents to provide to RTC.

Please contact me at (312) 793-8824, with questions or for clarification.

Sincerely,


John C. Feeley
Counsel for the Staff of the
Illinois Commerce Commission

cc: Service List

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